In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 538

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, petitioner

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Customs Court (R. 87–97) are reported in 59 Treas. Dec. 747 (T. D. 44758). The opinions of the Court of Customs and Patent Appeals (R. 98–148) are reported in 62 Treas. Dec., No. 26, p. 68 (T .D. 45773).

JURISDICTION

The judgment of the Court of Customs and Patent Appeals was entered June 20, 1932. (R. 148–149.) A petition for rehearing was denied October 10, 1932. (R. 149–150.) The petition for a writ of certiorari was filed December 6, 1932. The jurisdiction of this Court is invoked under Section

195 of the Judicial Code as amended by Section 647 of the Tariff Act of 1930, c. 497, 46 Stat. 590, 762 (U. S. C. Sup. V, Title 28, Sec. 308).[1]

QUESTIONS PRESENTED

1. Whether the University of Illinois is an instrumentality of the State of Illinois engaged in a governmental function.

2. If the University of Illinois is such an instrumentality, whether it may recover the amount of customs duties paid on articles imported by it, on the ground that the exaction of the duties is prohibited by the Constitution.

STATEMENT

In 1927 and 1928, the petitioner purchased in Germany and imported into this country certain property, upon which the Collector of Customs assessed duties. (R. 32–33; 35–36; 37–38; 40–41.) The property consisted of chemical glassware, an electric machine and parts, an optical instrument, and certain scientific apparatus.

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[1] Since the importations involved in this case were made in 1927, the amendment to Section 195 of the Judicial Code made by the Tariff Act of 1930 is apparently inapplicable. See the brief of the United States in *Lamont, Corliss & Co.* v. *United States*, No. 113, October Term, 1931, certiorari denied, 284 U. S. 622. The Attorney General filed no certificate of importance in this case, but such a certificate is not essential to this Court's jurisdiction even if the Tariff Act of 1930 is inapplicable, since the case is apparently one "in which there is drawn in question the construction of the Constitution of the United States."

The petitioner paid the duties assessed, and filed protests with the Collector of Customs. After a hearing, the Customs Court overruled the protests and entered judgment for the Government. (R. 97.) On appeal to the Court of Customs and Patent Appeals, that court, with two judges dissenting, affirmed the judgment of the Customs Court. (R. 148–149.)

DISCUSSION

The contention that the Federal Government may not impose customs duties upon property imported by a State university raises a question of constitutional law both novel and important. Immunity of a State or its instrumentalities from the imposition of customs duties apparently has not been asserted in any judicial proceeding other than the instant case. The interest of the State of Illinois in this proceeding is evidenced by the fact that the Attorney General of the State has joined in the pending petition for certiorari. Because of the importance of the constitutional question involved and the interest of a sovereign State therein, we do not oppose the granting of the writ.

Respectfully submitted.

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DECEMBER, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1932